Supreme Court, U.S.
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No. 97 925 DEC - 3 1997

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In The

Supreme Court of the United States

October Term, 1997

CHELA H. URBINA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Is the possession of a large quantity of contraband a sufficient evidentiary predicate for a conviction of conspiracy to import and distribute narcotics?

Is it permissible to enhance a sentence on the basis of a leadership role in a conspiracy, where the conviction is predicated only upon possession of a large quantity of contraband?

Is it constitutionally permissible, in terms of the due process requirement that a judgment must have an evidentiary predicate, for a conviction and a leadership — sentencing enhancement to be based on an inference upon inference, or a presumption upon a presumption?

Do the denials of trial-court applications, which are meritorious and customarily granted, serve to create the appearance of an unfair trial?

PARTIES TO THE PROCEEDING

All parties to the proceeding are listed in the caption.

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The petitioner, Chela H. Urbina, respectfully requests that a writ of certiorari be issued in order to review the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit was issued on July 30, 1997 under No. 95-5435 of the non-argument calendar. The opinion is unreported. District court proceedings were maintained under Docket No. 94-6140-CR-TAG, for the United States District Court for the Southern District of Florida. No opinion was issued by the district court, the appeal to the court of appeals having been taken from a judgment of conviction issued upon a jury verdict.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on July 30, 1997. A timely petition for rehearing was filed and denied on September 4, 1997 (App. B). The petitioner was prosecuted under 21 U.S.C. §§ 841(a)(1), 846, 952(a) and 963.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part, as follows: "No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

21 U.S.C. § 841(a)(1) provides that:

> Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally —
>
> > (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

21 U.S.C. § 846 provides as follows:

> Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for this offense, the commission of which was the object of the attempt or conspiracy.

21 U.S.C. § 952(a) provides, in pertinent part, as follows:

> It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of title II, or any narcotic drug in schedule III, IV, or V of Title II . . .

21 U.S.C. § 963 provides that:

> Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

STATEMENT OF THE CASE

The fundamental question in this case is whether a narcotics conspiracy conviction (and a corresponding sentencing enhancement upon a "leadership role") can be sustained wherein the evidentiary basis therefor is found solely upon the defendant's being found in possession of a large quantity of contraband.

A. Background Of The Case

Upon a search of a container, customs officers observed forty boxes of cigarettes and some three hundred boxes of shoes. Cocaine was found within the cigarette boxes. (R. 6:116-128, 135-136, 137, 141).

The shipment was then subjected to a controlled delivery, the appellant being the one who had provided documentation to a shipping agent for receipt of the boxes. (R. 7:271, 332-346). Delivery was made by means of a tractor trailer — common carrier. (R. 6:144-145, 7:213-231).

Two customs service agents interviewed the defendant upon seizure of the shipment. The defendant denied knowledge of importing narcotics, stating that she was "set-up" by others. (R. 7:252-259).

No other individual was indicted. The government did not claim that any person or company involved in the shipping or post-shipping transporting of the containers acted in concert with the defendant.

B. The Proceedings In The Courts Below

The defense attorney, upon the commencement of trial, requested a brief continuance in order to translate disclosure

material from Spanish to English, the material being delivered to him only on the night before the scheduled trial date. This request was denied. (R. 6:9-10).

The district court also denied two requests of the jury for a transcript of the brief testimony of a defense witness as to prior shipments of non-contraband material. (R. 8:461-462, 9:469-471).

The district court judge imposed the following sentence upon the petitioner: Thirty years (360 months) of imprisonment to be followed by five years of supervised release. A two-level enhancement was based upon a leadership role. (R. 1:31-33).

REASONS FOR GRANTING THE WRIT

I.

THE WRIT SHOULD BE GRANTED BECAUSE THE OPINION BELOW IS IN CONFLICT WITH BOTH PRIOR DECISIONS OF THIS COURT WITH RESPECT TO UTILIZATION OF EVIDENTIARY PRESUMPTIONS TO PREDICATE A FACT-FINDING, AND WITH RESPECT TO THE DUE PROCESS-RIGHT AS TO A CONVICTION BEING BASED UPON EVIDENTIARY PROOF OF THE OFFENSE CHARGED.

The crux of this petition is based upon the opinion of the court below, wherein a conspiracy conviction based upon an inference of a corrupt agreement and a sentencing increment due to a "leadership" role, have both been upheld from the solely proof of possession of a large quantity of contraband. Such multiple inferences which purportedly arise from the one proven fact of possession are at odds with prior decisions of this Court, and with the petitioner's due process rights because, *inter alia*:

(a) It is constitutionally permissible to invoke a presumption (or interference) as a substitute for proof of fact only where it can be said that the presumed finding of fact can be upheld as a matter of common experience; and

(b) A conviction based upon an insufficient evidentiary basis is violative of the constitutional right against loss or property without due process of law.

Tot v. United States, 310 U.S. 463, 63 S. Ct. 1241, 1245, 87 L. Ed. 519 (1943); *Manley v. Georgia*, 279 U.S. 1, 3-4, 49 S. Ct. 215, 73 L. Ed. 575 (1928); *Casella v. California*, 491 U.S. 263, 109 S. Ct. 2419, 2422, 105 L. Ed. 218 (1989); *United States v. Gaudinisisus*, 115 S. Ct. 2310, 2313, 132 L. Ed. 2d 444 (1995); *Sullivan v. Louisiana*, 508 U.S. 275, 113 S. Ct. 2078, 2081-2082; 124 L. Ed. 2d 182 (1993). *See also McFarland v. American Sugar Co.*, 241 U.S. 79, 84-87, 36 S. Ct. 498, 60 L. Ed. 899 (1915) (opinion per Holmes, J.).

It is, of course, constitutionally permissible for one evidentiary fact to be used as a basis for the finding of another, or the ultimate fact. *Tot v. United States*, *supra*. However, in order to avoid conflicts with both the presumption of innocence, and with the due process-guarantee of an evidentiary predicate for a finding of fact, there must be a rational nexus between the proven fact and presumed or inferred fact. *Leary v. United States*, 395 U.S. 6, 89 S. Ct. 1532, 1548-1549, 23 L. Ed. 2d 57 (1969); *Morrison v. California*, 291 U.S. 82, 86-88, 91-96, 54 S. Ct. 281, 78 L. Ed. 664 (1933). In addition, the connective must be based upon common experience. *Tot v. United States*, *supra*. In this regard, the Supreme Court has shown no reluctance to strike even legislative enactments of statutory presumptions, (as opposed to mere evidentiary inferences), where it could not have

been held that the presumed (or inferred) fact could not have been rationally justified as a matter of common experience. *Tot v. United States*, *supra* (presumption of knowledge that firearms transported within interstate commerce from possession of weapons); *Leary v. United States*, *supra* (presumption that marijuana user knew that substance was imported); *Morrison v. California*, (presumption that oriental ancestry of land buyer imparted knowledge of buyer's lack of United States citizenship); *United States v. Romano*, 362 U.S. 136, 86 S. Ct. 279, 282-283, 15 L. Ed. 2d 210 (1965), (presumption of possession of liquor from presence at still); *Manley v. Georgia*, *supra* (presumption of commission of fraud from insolvency of bank); *Taylor v. Georgia*, 315 U.S. 25, 62 S. Ct. 415, 417-418, 86 L. Ed. 510 (1942) (statutory presumption of intent to defraud from failure of repayment). *See Casella v. California*, *supra*.

Other courts of the United States, as well as state courts, have done no less. *United States v. Moore*, 571 F.2d 76, 85-87 (2d Cir. 1978) (presumption of transporting kidnapping victim within interstate commerce from holding victim for twenty four hours); *Minski v. United States*, 131 F.2d 614, 617 (6th Cir. 1942), *aff'd*, 319 U.S. 463, 63 S. Ct. 1241, 87 L. Ed. 112 (1943) (presumption of transporting or shipping firearm within interstate commerce from possession of weapon with obliterated serial number); *American Library Ass'n v. Thornburgh*, 713 F. Supp. 469, 480-481 (D.C. Cir. 1989) (failure of photograph studio to maintain records of visual depiction of minor resulting in rebuttable presumption that minor engaged in sexually explicit behavior); *Darbyshive v. State*, 196 Ind. 608, 149 N.E. 166 (Ind. 1925); *State v. Kelly*, 218 Minn. 247, 15 N.W. 2d 554, 557 n.3, 563 (Minn. 1941); *State v. LaPointe*, 81 N.H. 227, 123 Atl. 692, 693-695 (N.H. 1924); *Wynehammer v. People*, 13 N.Y. 378, 446-447 (1856) (N.O.R.) (all voiding presumptions of illegal possession or illegal sale of liquor from possession); *Shelly v. Swing*, 65 Ohio App. 109, 29 N.E. 2d 364, 367-368 (Ohio App. 1939) (presumption that accident caused by defective road).

Therefore, the "common sense" conclusion contained in the lower court's opinion as to sufficiency of a finding of conspiracy from possession is totally at odds with the Supreme Court's opinions on this issue because the method of transporting narcotics is not a matter of common knowledge or common experience. *Tot v. United States*, *supra*; *Casella v. California*, *supra*; *Leary v. United States*, *supra*; *Manley v. Georgia*, *supra*; *Taylor v. Georgia*, *supra*.

Indeed, if it is unconstitutional to presume or infer knowledge of transporting a firearm in interstate commerce from purchase and possession of the weapon because such a presumption or inference does not flow from common experiences, *Tot v. United States*, *supra*, no less can be held with respect to a presumption of a conspiracy to violate the narcotics laws which is based solely upon possession.

The due process infirmity of engaging in a presumption or inference, where there is no logical, rational, evidentiary connective therefore, has full application to the sentencing procedures of the instant case. *Gardner v. Florida*, 430 U.S. 349, 97 S. Ct. 1197, 51 L. Ed. 393, 404 (1977); *United States v. Lemon*, 723 F.2d 922, 933 (D.C. Cir. 1983).

A defendant is to be sentenced upon a trial court's evaluating all facts and circumstances which have a bearing upon the issues of whether imprisonment is appropriate, and, if so, the length thereof. *Williams v. New York*, 337 U.S. 241, 246-247, 69 S. Ct. 1079, 1082-1083 90 L. Ed. 1137 (1949); *United States v. Manotas-Mejia*, 824 F.2d 360, 367 (5th Cir. 1979).

This principle has evolved into a due process right to be sentenced only upon evidentiary proof of a purported enhancement — factor similar to the due process right to be convicted only upon evidentiary proof of the elements of the

crime. *United States v. Patrick*, 983 F.2d 206, 208 (11th Cir. 1993); *Sullivan v. Louisiana*, 508 U.S. 275, 113 S. Ct. 2078, 2081-2082, 124 L. Ed. 2d 182 (1993); *United States v. McGatha*, 891 F.2d 1520, 1526-1527 (11th Cir. 1990). Due process operates to prohibit invocation of a presumption or inference where the underlying factual predicate to its creation is lacking. *Casella v. California*, *supra*; *United States v. Gaudinisisus*, *supra*; *Sullivan v. Louisiana*, *supra*. Therefore, a presumption of leadership status for sentence — enhancement purposes is also violative of due process where a finding of conspiracy is based solely upon possession, and where a finding of leadership status is pyramided thereon. *United States v. Patrick*, *supra*.

The petitioner is mindful that since the challenged inference was permissive (rather than mandatory, as is the case for a statutory presumption or inference), she is obliged to demonstrate its invalidity as it is applied to her. *County Court of Ulster County, New York v. Allen*, 442 U.S. 140, 99 S. Ct. 2213, 2224-2225, 60 L. Ed. 2d 777 (1979).

Thus, the petitioner is also mindful that she is obliged to demonstrate the erroneous application of the presumption or inference, in terms of the "reasonable doubt standard," with respect to there being no "rational way the trier could make the connection permitted by the inference." *County Court of Ulster County, New York v. Allen*, *supra* at 2225.

The petitioner has satisfied this burden because a finding conspiracy (and, correspondingly, an inference of leadership — status therein) can not be made solely upon the possession of a large quantity of contraband. *United States v. Obialo*, 23 F.3d 69, 73 (3d Cir. 1994); *United States v. Smith*, 34 F.3d 514, 523 (7th Cir. 1994).

II.

THE PETITION FOR CERTIORARI SHOULD BE GRANTED IN ORDER TO RESOLVE THE CONFLICT AMONG THE CIRCUITS ON THE ISSUE OF WHETHER POSSESSION OF A LARGE AMOUNT OF CONTRABAND IS SUFFICIENT TO SUSTAIN A DRUG-CONSPIRACY CONVICTION.

The Eleventh Circuit Court of Appeals, in affirming the conviction upon the drug-conspiracy counts of the indictment, expressly upheld the government's claim that importation of a large quantity of contraband "could not have occurred without the participation of an extensive criminal organization . . ."

In point of direct contrast, the Third and Seventh Circuit Courts of Appeals have specifically held that possession of a large quantity of contraband is an insufficient evidentiary predicate for the sustaining of a charge of drug conspiracy. *United States v. Obialo*, 23 F.3d 69, 73 (3d Cir. 1994); *United States v. Smith*, 34 F.3d 514, 523 (7th Cir. 1994).

The petitioner, thus, respectfully submits that certiorari should be granted so as to resolve the conflict among at least three circuits as to whether possession of a large quantity of narcotics is a sufficient evidentiary basis for a drug-conspiracy conviction. *United States v. Falcone*, 311 U.S. 205, 61 S. Ct. 204, 85 L. Ed. 128 (1940); *Nat. Ass'n of Greeting Card Pub. v. United States Post. Serv.*, 462 U.S. 810, 103 S. Ct. 2717, 2724-2725, 77 L. Ed. 2d 195 (1983); *Hoffman v. Blaski*, 363 U.S. 335, 80 S. Ct. 1084, 1087, 4 L. Ed. 2d 1254 (1960).

In addition, since drug, RICO, and other criminal conspiracy cases constitute major portions of the district and circuit courts' dockets, the petitioner also respectfully submits that certiorari

should also be granted because the issue of whether possession of a large quantity of narcotics is sufficient to sustain a drug-conspiracy charge has a most substantial impact on the administration of criminal justice. *Carbo v. United States*, 364 U.S. 611, 81 S. Ct. 338, 340-343, 5 L. Ed. 2d 329 (1961). *See also Gruenwald v. United States*, 353 U.S. 391, 77 S. Ct. 963, 972-973, 1 L. Ed. 2d 931 (1957) and *Direct Sales Co. v. United States*, 319 U.S. 203, 63 S. Ct. 1265, 1268-1270, 87 L. Ed. 1674 (1943).

It is respectfully submitted that the rule, as enunciated by the Third and Seventh Circuit Courts of Appeals, is the one which should be followed because a finding of culpability based on possession of a large quantity of contraband is at odds with both the very definition of a conspiracy and with the nature of proof of the crime. A conspiracy is a corrupt agreement to commit a specific offense. *Dennis v. United States*, 302 F.2d 5, 8-9 (10th Cir. 1962); *United States v. Falcone*, *supra* at 205. Therefore, the government, in a criminal-conspiracy case has the burden of proving the existence of both the agreement, and the defendant's knowing, intentional participation therein. *Morrison v. California*, 291 U.S. 82, 86-88, 54 S. Ct. 281, 78 L. Ed. 664 (1933); *United States v. Wiseman*, 25 F.3d 862, 865 (9th Cir. 1994); *Gruenwald v. United States*, *supra* at 974.

Therefore, proof of possession, in and of itself, does not support a finding of conspiracy to import and distribute because no evidence of an agreement with another to commit the offense arises therefrom. *United States v. Obialo*, *supra*; *United States v. Smith*, *supra*. To be sure, one who imports and distributes a large quantity of any substance must have the assistance and participation of third parties with respect to packaging and transportation. However, the involvement of others in such activities by means of nominally innocent acts does not result in a sustainable finding of conspiracy because of lack of proof

of knowledge of and intent to participate in the conspiracy, and because acts which are otherwise innocent are not proof of the crime of conspiracy without proof of such knowledge and intent. *Morrison v. California*, *supra* at 90, *Ingram v. United States*, 360 U.S. 672, 79 S. Ct. 1314, 1319, 3 L. Ed. 2d 1503 (1959); *United States v. Ramos-Rascon*, 8 F.3d 704, 710-711 (9th Cir. 1993); *United States v. Sadiq*, 783 F. Supp. 98, 105, 102 (E.D.N.Y. 1992); *United States v. Sacerio*, 952 F.2d 860, 864-865 (5th Cir. 1992); *United States v. Falcone*, *supra* at 205; *United States v. Nusraty*, 867 F.2d 759, 764 (2d Cir. 1989); *United States v. Aguilar*, 610 F.2d 1296, 1303-1304 (5th Cir. 1980).

Indeed, the cases cited in Eleventh Circuit's opinion are not to the contrary, conspiracy convictions having been upheld, not on the basis of possession alone, but upon proof of third parties acting in concert with the defendant charged with conspiracy. *United States v. Mejia*, 97 F.3d 1391, 1393 (11th Cir. 1996) (admission of obtaining contraband from third party to DEA agent); *United States v. Martinez*, 96 F.3d 473, 477 (11th Cir. 1996) (statement that defendant had weapons and third parties available); *United States v. Cruz-Valdez*, 773 F.2d 1541, 1544 (11th Cir. 1985); *United States v. Mosquera*, 779 F.2d 628 (11th Cir. 1986) (boat captains transporting of contraband with crewmen); *United States v. Battle*, 892 F.2d 993, 1003 (11th Cir. 1990) (pilot who, perforce, necessitated trusted ground crew for refueling of airplane).

The petitioner is mindful that a conspiracy may be proven by circumstantial, inferential evidence because clandestine agreements, are not generally susceptible of being proven by direct evidence. *Wilder v. United States*, 100 F.2d 177, 182 (10th Cir. 1938).

However, there must be some specie of evidentiary proof

of both a corrupt agreement and knowing participation therein for a conspiracy conviction to be upheld. *See United States v. Falcone, supra.*

One can be convicted of conspiring with unknown third parties to commit a criminal offense.

However, there must be some evidentiary proof as to knowledgeable involvement of third parties. *United States v. Obialo, supra*; *United States v. Smith, supra.*

This Court has had occasion to be critical of the government's unfair and arbitrary adding of conspiracy counts to an indictment containing counts of commission of the underlying substantive offense. *Kruelwitch v. United States*, 336 U.S. 440, 445-446, 69 S. Ct. 716, 93 L. Ed. 790 (1948); *Gruenwald v. United States*, 353 U.S. 391, 77 S. Ct. 963, 972, 1 L. Ed. 2d 931 (1957). Condemnation of the arbitrary including of conspiracy counts in a drug-trafficking indictment because of unfair sentence enhancement has been reiterated by at least one district court, with full awareness of the dangers to the public inherent in drug distribution, *United States v. Sadiq, supra* at 101-102.

The question of sufficiency of evidence to sustain a conspiracy conviction has apparently not been reviewed by this Court in many years. *Gruenwald v. United States, supra*; *United States v. Falcone, supra*; *Kruelwitch v. United States, supra.*

It is, thus, respectfully submitted that certiorari should be granted so as to opine upon this issue, not only because of a conflict within the circuit courts of appeals drug-trafficking and related conspiracy cases being an every-day matter of litigation in the United States courts. *Carbo v. United States, supra.*

III.

CERTIORARI SHOULD BE GRANTED BECAUSE THE PYRAMIDING OF INFERENCES, OR PRESUMPTIONS, ENGAGED IN TO SUSTAIN THE CONSPIRACY CONVICTION IS AT VARIANCE WITH SUPREME COURT OPINIONS ON THE SAME ISSUE, AND BECAUSE THERE IS WIDESPREAD DIVERGENCE OF AUTHORITIES AMONG THE CIRCUIT AND DISTRICT COURTS.

According to the Eleventh Circuit Court of Appeals decision, possession of a large quantity of narcotics results in an inference (or presumption) of intent to distribution, the inference, in turn, resulting in a permissible finding of conspiracy, with this inference (or presumption) then creating a further basis for incrementing the sentence on the basis that the defendant was a presumed leader of the conspiracy (possession was the sole basis for conviction on all counts of the indictment as well as for enhanced sentencing).

It is conceded that possession of a large quantity of contraband is a sufficient evidentiary basis for conviction of intent to distribute. *See Yee Hen v. United States*, 268 U.S. 178, 185, 45 S. Ct. 470, 69 L. Ed. 904 (1925).

The petitioner, nevertheless, respectfully submits that a finding of conspiracy, and a leadership role, which is based solely upon evidence of possession, cannot be upheld because the pyramiding of multiple inferences is at variance with long-established rules of this Court. *Manning v. Insurance Company*, 100 U.S. 693, 698-699, 25 L. Ed. 761 (1880); *United States v. Ross*, 92 U.S. 28, 284-285, 23 L. Ed. 707 (1875); *United States v. Carro*, 132 U.S. 644, 653-654, 10 S. Ct. 182, 33 L. Ed. 483 (1890).

In addition, the Supreme Court has expressly held that "charges of conspiracy are not to be made out by piling inference upon inference . . ." *Direct Sales Co. v. United States*, 319 U.S. 703, 63 S. Ct. 1265, 1269, 87 L. Ed. 1674 (1943).

Therefore, the circuit of court of appeals' holding that findings of conspiracy and a leadership role can be based upon the compounding inferences is in derogation of numerous decisions of this Court. *Manning v. Insurance Company*, *supra*; *United States v. Ross*, 92 U.S. 28, 23 L. Ed. 707 (1875); *United States v. Carro*, *supra*; *Direct Sales Co. v. United States*, *supra*.

Moreover, the petitioner respectfully submits that certiorari should also be granted because of the development of the law of evidence on the issue of pyramiding of inferences since the Supreme Court has last definitely ruled on the issue over one hundred years ago. *Manning v. Insurance Company*, *supra*; *United States v. Ross*, *supra*; *United States v. Carro*, *supra*. *See Schmerber v. California*, 384 U.S. 257, 86 S. Ct. 1826, 1829-1830, 16 L. Ed. 2d 908 (1966) and *Continental Ore Co. v. Union Carbide and Carbon Corp.*, 370 U.S. 690, 82 S. Ct. 1404, 1409, 8 L. Ed. 2d 777 (1962).

The Eleventh Circuit Court of Appeals has held that a fact finding may be made by means of an inference upon an inference, while declining to do so in the case at bar. *Daniels v. Twin Oaks Nursing Home*, 692 F.2d 1321, 1324-1326 (11th Cir. 1987) (permitting *res ipsa loquitur* — inference of negligence in decedent's flight from nursing home but refusing to infer that death caused by decedent being left unattended). A predecessor Fifth Circuit Court of Appeals panel has adopted the view of a leading evidence treatise in permitting an inference to be made upon an inference, but has also held that such cumulative inferences could not be used for a fact finding in criminal cases. *Cora Pub. Co. v. Cont. Cas Co.*, 619 F.2d 482, 485-486 (5th Cir.

1980). Other United States courts have held that one group of proven facts can result in parallel or multiple inferences of other factual conclusions. *Prud. Ins. Co. v. Glasgow*, 208 F.2d 908, 911-912 (2d Cir. 1957); *Hunter v. Shell Oil Co.*, 198 F.2d 485, 490-491 (5th Cir. 1952) (the court also cautioning that fact finder is not allowed to compound a chain of inferences "[I]nto the realm of pure conjecture."). *See also Rafia v. Northern Indiana Public Service Co.*, 993 F.2d 1306, 1309 (7th Cir. 1993) and *Muller v. United States Postal Service*, 811 F. Supp. 325, 327 (N.D. Ohio 1990). Divergence of authorities are found in other opinions wherein the rule against inferences — upon — inferences has been squarely upheld. *The Glasgow Maru*, 1 F.2d 503, 505 (S.D. Tex. 1924); *Brown v. Md. Casualty Co.*, 55 F.2d 159, 161 (8th Cir. 1937); *Tuck v. Taylor Engineering Manufacturing Co.*, 48 F.2d 783, 786 (10th Cir. 1931); *Cronin's Estate v. Commissioner of Internal Revenue*, 164 F.2d 561, 565 (6th Cir. 1947) (holding that "inference upon inference . . ." is "[s]o abhorrent to American law"); *People's Bank of Sanford, N.C. v. Fidelity & Deposit Co.*, 4 F. Supp. 379, 381 (M.D.N.C. 1933); *Otis Elevator Co. v. Yager*, 268 F.2d 137, 144 (8th Cir. 1959); *Dunlap v. Ribicoff*, 207 F. Supp. 511, 514 (D. Kan. 1962).

Still other courts have apparently opted neither to accept nor reject the inference-upon-inference rule, but have determined the application thereof upon the facts of the individual case. *Looney v. Metropolitan Railroad Co.*, 200 U.S. 480, 488, 26 S. Ct. 303, 50 L. Ed. 564 (1903) (no inference of negligence from custody of apparatus and corresponding duty of care where accident could have resulted from multiple causes); *United States v. Carro, supra* (no presumption of knowledge of postal worker's, noncompliance with delivery schedules arising from presumption of postmaster, performance of duties); *Tyrell v. Dobbs Investment Co.*, 337 F.2d 761, 764-765 (10th Cir. 1964) (inference of multiple deliveries not to be made from proof of one delivery). *See also General Reinsurance Corporation v.*

Southern Surety Co., 27 F.2d 265, 272 (8th Cir. 1928); *Cunard SS Co. v. Kelley*, 126 Fed. 610, 611, 615-616 (1st Cir. 1903); *Allen v. Trust Co. of Georgia*, 149 F.2d 120, 127 (5th Cir. 1945); *Old South Lines v. McCaston*, 92 F.2d 439, 440 (5th Cir. 1937); *Cf. Mikulujczyk v. Allcaft*, 102 F.2d 82, 84 (3d Cir. 1939) (presumption of due care did not result in presumption or inference that accident was caused by other vehicle).

Regardless of whether the inference-upon-inference rule is to be rejected, upheld, or applied upon a case-by-case basis, the petitioner respectfully submits that an extensive sentence can not be imposed on the basis of an inference or intent to distribute arising from possession, which is then used as the predicate for a finding of conspiracy, and the finding of conspiracy being then pyramided into a finding of a leadership role for sentencing purposes. *Manning v. Insurance Company, supra*; *United States v. Ross, supra*; *United States v. Carro, supra*; *Looney v. Metropolitan Railroad Co., supra*; *United States v. Sadiq*, 783 F. Supp. 98, 100-102 (E.D.N.Y. 1992).

Therefore, such multiple inferences do not satisfy the minimal evidentiary standard which is essential to the upholding of a conspiracy conviction and sentencing thereon. *United States v. Sadiq, supra*; *Direct Sales Co. v. United States, supra.*

Moreover, since the principles of law concerning the propriety of multiple inferences arising from one proven fact have not been reviewed by the Supreme Court for many years, it is respectfully submitted that the petition for certiorari should be granted. *Schmerber v. California, supra.*

IV.

CERTIORARI SHOULD BE GRANTED, AND A REVERSAL SHOULD ISSUE, BECAUSE THE APPEARANCE OF AN UNFAIR TRIAL IS PRESENTED BY THE RECORD.

A request for a brief continuance so as to permit translation of late delivered — *Brady*, exculpatory material was peremptorily denied. In addition, the jurors' request for a readback of brief defense evidence was also twice denied.

The request for a brief continuance so as to utilize late delivered — *Brady* material was erroneous because of the constitutionally guaranteed right for adequate time for defense counsel to investigate the case and prepare for trial. *California v. Trumbetta*, 467 U.S. 479, 104 S. Ct. 2528, 2532, 81 L. Ed. 2d 413 (1984); *Holton v. Newsome*, 750 F.2d 1513, 1515 (11th Cir. 1985); *United States v. Olson*, 697 F.2d 273, 275-276 (8th Cir. 1983).

A jury's request for a readback of specific testimony, perforce, evinces either disagreement as to evaluation, or doubt as to its content. *United States v. Rabb*, 453 F.2d 1012, 1014 (3d Cir. 1971). *Cf. United States v. Argencourt*, 996 F.2d 1300, 1305-1306 (1st Cir. 1993).

Judicial discretion is not unlimited, and must be both exercised and evaluated within the parameters of determinative legal principles relating to the specific ruling. *United States v. Rabb, supra*. Therefore, the refusal to readback the crucial, brief testimony (the request evincing juror disagreement upon content or weight), while exhorting the jurors to search their own recollections (which may well have been faulty or disputed), was erroneous; *United States v. Jackson*, 257 F.2d 41, 43 (3d Cir. 1958).

The right to a trial by an impartial, neutral judge is a fundamental requirement of due process. *Haines v. Liggett Group, Inc.*, 975 F.2d 81, 97-98 (3d Cir. 1992); *Cf. Turney v. Ohio*, 273 U.S. 510, 47 S. Ct. 437, 444, 71 L. Ed. 71 (1927).

An appellate tribunal is unable to divine the state of mind of a trial court with respect to certaining whether an erroneous ruling was motivated by lack of impartiality. Thus, a new trial is necessary where trial court rulings leave the impression of an unfair trial. *See Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 71 S. Ct. 624, 643-644, 95 L. Ed. 817 (1949) (Concurring opinion per Frankfurter, J.).

An impression of an unfair trial results from the denial of a request made during the course of trial which is ordinarily granted. *See People v. Becker*, 210 N.Y. 274, 293, 295-299, 301-304, 104 N.E. 396 (1914).

The same impression flows from the denial of request for a readback of brief testimony. *United States v. Jackson*, *supra*.

It is thus, respectfully submitted that certiorari be granted, the lower court should be reversed, and that a new trial be ordered. *Joint Anti-Fascist Committee v. McGrath*, *United States v. Parker*, *supra*.

CONCLUSION

The case presents issues of exceptional importance, *i.e.*, the sufficiency of evidence to sustain a conspiracy and sentencing enhancement thereon. There is a pronounced conflict among the circuit courts of appeal on this issue. This conflict can be resolved by means of the granting of the instant petition.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED JULY 30, 1997

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-5435
Non-Argument Calendar

D. C. Docket No. 94-6140-CR-JAG

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHELA H. URBINA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(July 30, 1997)

BEFORE HATCHETT, Chief Judge, EDMONDSON and BIRCH, Circuit Judges.

PER CURIAM:

Chela Urbina appeals her conviction for conspiracy to import cocaine, 21 U.S.C. §§ 952(a) and 963; importation of cocaine, 21 U.S.C. § 952(a); conspiracy to possess cocaine with intent to distribute, 21 U.S.C. §§ 841(a)(1) and 846; and

possession of cocaine with intent to distribute, 21 U.S.C. § 841(a)(1). Urbina argues that (1) the district court erred in denying Urbina's motion for a new trial after the admission of a post-arrest statement that was ruled inadmissible in a pre-trial suppression hearing; (2) the district court abused its discretion in denying the jury's request to see a transcript of the testimony of one of the witnesses; and (3) there was insufficient evidence to sustain the conspiracy counts.[1] We affirm.

On June 5, 1996, a vessel arrived at the Port of Miami from Cartagena, Colombia. One of the containers on the vessel was destined to the Great Falls Trading Company ("Great Falls"), which is owned by Urbina, and, according to the shipping manifest, contained shoes. The Contraband Enforcement Team, working under the United States Customs Service, inspected the container and found that it included forty cigarette boxes labeled "Marlboro" and "Kool," in addition to approximately 350 boxes of shoes. Subsequent analysis showed that the cigarette boxes contained 1,198 kilograms (or over 1 ton) of 86% pure cocaine.

On June 17, 1994, the container was released to a customs broker under a controlled delivery. On June 21, 1994, the cargo was picked up by a commercial trucking company and driven to a warehouse rented by Urbina for Great Falls. Federal officers had set up a video camera in front of the warehouse and observed that Urbina and three males met the cargo. The driver of the truck was directed to back into the warehouse, and the three

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1. Urbina also argues that the cumulative effect of the first two alleged errors in addition to the district court's refusal to grant a continuance of the trial due to the late disclosure of certain materials by the prosecution rendered the trial unfair and thus requires a reversal of her convictions and a new trial. We summarily reject this argument.

males proceeded to unload the truck under Urbina's direction. The driver assisted in unloading the boxes and he was told that the cigarette boxes were so much heavier than the rest of the boxes because they contained caramel candy. The cigarette boxes were separated from the shoe boxes.

After the boxes were unloaded, Urbina made a telephone call on a cellular telephone. A U-Haul truck arrived to the warehouse five minutes later, and only the cigarette boxes were loaded into the truck. The truck was driven away, followed by law enforcement agents. The truck was later abandoned in a mall in Dade County, Florida, and the cocaine was recovered by the agents.

After the U-Haul truck left the warehouse, Urbina and her boyfriend, Efrain Velez, drove off in another direction. According to the agents who followed Urbina's car, Urbina and Velez drove in a manner indicative of countersurveillance and stopped several times to make calls from pay telephones along the way. Urbina and Velez were eventually arrested. The only person charged with the crimes at issue in this case was Urbina.

Before trial, Urbina filed a motion to suppress statements she made to the arresting officer on the grounds that these statements were obtained in violation of her Fifth and Sixth Amendment rights. After an evidentiary hearing, a magistrate judge recommended that Urbina's statements made prior to the administration of *Miranda*[2] warnings as well as her statements after she requested an attorney be suppressed. One of the pre-*Miranda* statements was that Urbina had not seen any of the

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2. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 339 (1966).

cigarette boxes in the shipment. The magistrate judge ruled, however, that the statements made by Urbina as she interrupted the arresting officer on several occasions *during* the administration of *Miranda* warnings were admissible. The district court adopted the magistrate judge's recommendations.

The arresting officer testified at trial, and the following exchange occurred during his direct examination by the prosecution:

> Q Were other statements made during the course of the reading of the [*Miranda*] rights?
>
> A Yes, sir, there were.
>
> Q Okay. And what were those statements?
>
> A Ms. Urbina advised me that she was not present at the unloading of the boxes.

R7-256. The court overruled Urbina's objection to this statement. Urbina contends on appeal that the prosecution violated the court's order suppressing Urbina's statement to the effect that she had never seen the cigarette boxes before. She also argues that the introduction of this statement obtained in violation of her constitutional rights was not harmless.

The magistrate judge's report and recommendation, adopted in full by the district court, clearly delineated the line between those statements that were suppressed and those that were not. The court suppressed only those statements that were made *prior* to the administration of *Miranda* warnings; statements made *during* the administration of *Miranda* rights were ruled

admissible, and Urbina does not appeal this ruling. It is of no consequence that the statement challenged by Urbina in this appeal is similar to one she made prior to the administration of her *Miranda* rights. Because the statement at issue here was made during the administration of *Miranda* warnings, it was not obtained in violation of Urbina's constitutional rights and was, therefore, admissible under the district court's pre-trial ruling.

Urbina's second contention is that the district court erred in refusing to provide the jury with a transcript of the testimony of Esther Alvarez, when the jury twice asked for that transcript during deliberations. Alvarez was an employee of the freight company which handled the Great Falls shipments. Alvarez testified that her company handled five separate shipments for Great Falls, and that she was personally involved in the last four of these shipments. The fourth shipment (i.e., the third shipment that Alvarez handled) contained the cocaine at issue in this case. Alvarez explained the process of importing goods through a United States port. She testified that Urbina presented to her "anti-narcotic certificates" issued by Colombian authorities for the third and fourth shipments. Alvarez had never seen such certificates in her career before that time. The serial number shown on the certificate for the third shipment corresponded to that shipment's container number. The serial number shown on the certificate for the fourth shipment — which contained the cocaine — did not correspond to that shipment's container number. The serial number on that certificate in fact corresponded to the container number of the fifth shipment, which contained shoes only and was never picked up from the port. On cross-examination, Alvarez testified that she saw nothing unusual about her transactions with Urbina.

Appendix A

The jury deliberated for thirteen hours. On the first day of deliberations, the jury asked to see a transcript of Alvarez's testimony. Over Urbina's objection, the district court gave the following answer:

> The evidence and testimony is now closed. We cannot read you portions of the testimony to the exclusion of other portions, because you must consider all of the testimony as a whole.
>
> In reaching your verdict, you will have to rely upon your respective collective recollections of the testimony.

R8-462. On the second day of deliberations, the jury submitted a second question, asking the court why a transcript could not be made available. The court again denied the jury's request for a transcript.

A district court has broad discretion in responding to a jury's request to read a portion of the trial transcript. *United States v. Edwards*, 968 F.2d 1148, 1152 (11th Cir. 1992). Urbina argues that Alvarez's statement to the effect that there was nothing unusual in her dealings with Urbina was very beneficial to Urbina's defense. Urbina further notes that Alvarez's testimony was no longer than thirty typed pages and that the jury's decision must have been close because the jury deliberated for thirteen hours in a trial that took four days in its entirety (two days of testimony only). In light of these facts, Urbina urges us to conclude that the district court abused its discretion in refusing the jury's request for a transcript.

Urbina has presented no compelling facts or arguments that would lead us to reach such a conclusion, however. "This is one

of those cases where the trial court, having given the matter proper consideration, could have been right on either course of action. . . . We discern no abuse of . . . discretion . . . ." *United States v. Quesada-Rosadal*, 685 F.2d 1281, 1283 (11th Cir. 1982). Moreover, the district court apparently was concerned that the jury would place undue weight on one portion of the testimony, rather than relying on the entire testimony to reach a verdict. *See Edwards*, 968 F.2d at 1152. Under the facts of this case, the court did not abuse its discretion by denying the jury's request.

Urbina's final contention is that the evidence was insufficient to sustain her conviction on the conspiracy counts. Sufficiency of the evidence is a question of law that we review *de novo*. *United States v. Keller*, 916 F.2d 628, 632 (11th Cir. 1990). We view "the evidence in the light most favorable to the jury's verdict, and accept reasonable inferences and credibility choices by the fact-finder." *United States v. Mattos*, 74 F.3d 1197, 1199 (11th Cir.), *cert. denied*, __ U.S. __, 116 S. Ct. 1839, 134 L. Ed. 2d 942 (1996). We uphold the conviction if a reasonable trier of fact could find that the evidence establishes the defendant's guilt beyond a reasonable doubt. *Id.* The evidence need not, however, "exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." *Id.* (internal quotation marks omitted).

To sustain a conviction for conspiracy to perpetrate a crime, the government must prove beyond a reasonable doubt three elements: (1) that a conspiracy existed; (2) that the defendant knew of the goals of the conspiracy; and (3) that the defendant, with knowledge, voluntarily joined the conspiracy. *United States v. Lopez-Ramirez*, 68 F.3d 438, 440 (11th Cir. 1995). In this case, Urbina was convicted — and she does not appeal her

convictions — for the underlying crimes of importation of cocaine and possession of cocaine with intent to distribute. She therefore concedes that the evidence supports the jury's verdict that she knowingly imported cocaine and possessed it with intent to distribute. Urbina also was convicted of conspiracy to commit each of the underlying offenses. The only element of the conspiracy convictions that she challenges, therefore, is the first element, namely the existence of conspiracies to perpetrate these crimes. By conceding her convictions for the underlying offenses, Urbina concedes that the jury could infer that, if a conspiracy existed, she knew of its goals — importation and possession of cocaine — and she voluntarily joined it. *Cf. United States v. Mejia*, 97 F.3d 1391, 1393 (11th Cir. 1996) (Evidence that supported the defendant's conviction for possession with intent to distribute also proves that he "knew of the goal of the conspiracy and, with such knowledge, voluntarily joined it."), *cert. denied*, __ U.S. __, 117 S. Ct. 1016, __ L. Ed. 2d __ (1997).

Urbina was the only defendant prosecuted for the crimes in this case. Urbina argues that the government failed to prove beyond a reasonable doubt the existence of named or unnamed co-conspirators. "We have repeatedly held[, however,] that a defendant may be convicted of conspiring with 'persons unknown,' if sufficient evidence supports the existence and involvement of such unknown persons." *United States v. Martinez*, 96 F.3d 473, 477 (11th Cir. 1996), *cert. denied*, __ U.S. __, 117 S. Ct. 998, __ L. Ed. 2d __ (1997). The government need not rely on direct proof to make its case; the existence of a conspiracy may be inferred from circumstantial evidence. *United States v. Battle*, 892 F.2d 992, 1002 (11th Cir. 1990). The question here, therefore, is whether the jury can reasonably infer from the circumstances of this case that a conspiracy to import and possess the cocaine with intent to distribute existed beyond a reasonable doubt.

Appendix A

The government argues that the importation of the large quantity of cocaine involved in this case — more than a ton — could not have occurred without the participation of an extensive criminal organization both in Colombia, where the cocaine is grown, processed, and shipped, and in the United States, where the cocaine must be distributed. We agree. This is a common sense conclusion that the jury is entitled to make. *See Martinez*, 96 F.3d at 477 (" '[T]he jury could reach a common sense conclusion that a drug smuggler would necessarily have contracted with a buyer or distributor in the United States.' ") (quoting *United States v. Mosquera*, 779 F.2d 628, 630 (11th Cir. 1986)); *Battle*, 892 F.2d at 1002 ("Plainly, the jury, using its common sense or general knowledge about commerce in controlled substances, could reject as incredible the notion that a prudent drug smuggler would allow merchandise valued at one million dollars to sit on board someone else's airplane for nearly two weeks . . . .") (citation omitted).[3] "It is an unfortunate fact of modern life that juries and courts know much more about commerce in controlled substances than they did a decade or more ago." *United States v. Cruz-Valdez*, 773 F.2d 1541, 1547 (11th Cir. 1985) (en banc). We conclude that the evidence is sufficient to sustain Urbina's conspiracy convictions.

AFFIRMED.

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3. We note that the quantity of drugs at issue in *Battle* was about nine kilograms of 84% pure cocaine, with a street value of approximately one million dollars. 892 F.2d at 995 n.2. The quantity of cocaine at issue here is more than one hundred times larger, with a street value probably exceeding $100 million. The jury could have inferred that Urbina did not import and intend to distribute such a large quantity of drugs without the participation of any other person. This inference is not only reasonable but also, possibly, the only logical one.

APPENDIX B — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA FILED NOVEMBER 14, 1995

UNITED STATES DISTRICT COURT
Southern District of Florida

Case Number 94-6140-CR-GONZALEZ

JIM BOMA, AUSA

UNITED STATES OF AMERICA

v.

CHELA H. URBINA

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, CHELA H. URBINA, was represented by SAMUEL RABIN, ESQ., 799 BRICKELL PLAZA, SUITE 606, MIAMI, FL 33131.

The defendant was found guilty on count(s) 1, 2, 3 & 4 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Appendix B

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 USC 963	CONSPIRACY TO IMPORT A SCHEDULE II CONTROLLED SUBSTANCE — COCAINE	6/6/94	1
21 USC 952(a)	IMPORTATION OF COCAINE	6/6/94	2
21 USC 846	POSSESSION WITH INTENT TO DISTRIBUTE COCAINE	6/21/94	3
21 USC 841a1	POSSESSION WITH INTENT TO DISTRIBUTE A MIXTURE CONTAINING COCAINE	6/21/94	4

As pronounced on NOVEMBER 9, 1995, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $200.00, for count(s) 1, 2, 3 & 4, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 14TH day of NOVEMBER, 1995.

s/ Jose A. Gonzalez, Jr.
JOSE A. GONZALEZ, JR.
U.S. DISTRICT JUDGE

Defendant's SSAN: 062-48-6512
Defendant's Date of Birth: 12/12/49
Defendant's address: 1131 S.W. 4TH STREET, BOYNTON BEACH, FL

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 360 months as to each count to be served concurrently with each other.

The defendant is remanded to the custody of the United States Marshal.

* * *

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years as to each count to be served concurrently with each other.

Appendix B

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

3. The defendant shall not own or possess a firearm or destructive device.

4. The defendant's supervised release shall be non-reporting as long as the defendant resides outside of the United States.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.

2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.

Appendix B

3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

4) The defendant shall support his or her dependents and meet other family responsibilities.

5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.

7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.

8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.

9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.

Appendix B

11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

STATEMENT OF REASONS

* * *

__✓__ The court adopts the factual findings and guideline application in the presentence report except (see attachment, if necessary):

Guideline Range Determined by the Court:

Total Offense Level: 40 Criminal History Category: I
Imprisonment Range: 292-365 months

* * *

__✓__ Fine is waived or is below the guideline range, because of the defendant's inability to pay.

* * *

Appendix B

✓ The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s):

The huge quantity of drugs (1200Ks).

* * *

DATE: November 9, 1995 s/ Jose A. Gonzalez, Jr.
U.S. DISTRICT JUDGE

APPENDIX C — DENIAL OF PETITION FOR REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT FILED SEPTEMBER 4, 1997

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 95-5435

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHELA H. URBINA,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern District of Florida

BEFORE: HATCHETT, Chief Judge, EDMONDSON, and BIRCH, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Appellant CHELA H. URBINA, is Denied.

ENTERED FOR THE COURT:

s/ illegible
UNITED STATES CIRCUIT JUDGE